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CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK 2/16/2023 2:32 pm

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES OF AMERICA \* Case No. 16-CR-403 (GRB)  
\*  
\* Long Island Federal  
\* Courthouse  
\* 100 Federal Plaza  
\* Central Islip, NY 11222  
\*  
v. \* December 14, 2022  
\*  
ALEXI SAENZ, et al. \*  
\* Defendants. \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE STEVEN I. LOCKE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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1 (Proceedings commenced at 2:37 p.m.)

2 THE CLERK: Calling case 16-CR-403, United States of  
3 America versus Saenz, et al. Counsel please state your  
4 appearance for the record?

5 MR. SCOTTI: Good afternoon, Your Honor, Paul  
6 Scotti, Megan Farrell and Justina Geraci, for the United  
7 States.

8 THE COURT: Good afternoon.

9 MS. TODD: Good afternoon, Your Honor. On behalf of  
10 Alexi Saenz, Natali Todd, Donald Knight, Julie DeAlmeida,  
11 Victor Abreu and Peter Williams. Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MS. SHARKEY: Good afternoon, Judge. Kelley  
14 Sharkey, Gary Villanueva and Ms. Walsh are here for Jairo  
15 Saenz.

16 THE COURT: Good afternoon. Please be seated.  
17 Let's swear the interpreter.

18 (The interpreter is sworn.)

19 THE INTERPRETER: I am a French interpreter. Good  
20 afternoon, Your Honor.

21 THE COURT: Good afternoon and thank you for joining  
22 us Ms. Gray.

23 All right. We're having this conference today  
24 because I have all the motion papers now on the motion to  
25 compel and, frankly, I want to come up with the most efficient

1 way possible to manage that motion and get a result without  
2 writing 85 pages about it, if it's avoidable. If it's not,  
3 then that's what we'll do.

4 Having read the papers, it seems to me that the  
5 motion, which if I recall correctly, was filed as much to  
6 maintain the record in light of Judge Brown's deadlines, as it  
7 was to get everything all at once.

8 Is that right, Mr. Villanueva. I believe you're the  
9 one who told me that?

10 MR. VILLANUEVA: I believe that's correct, Judge.

11 THE COURT: Okay. Having read the government's  
12 response, it seems like the response has fell into several  
13 buckets.

14 One is, we already produced this and here are the  
15 Bates stamp numbers. The other is, we're going to produce it,  
16 and the third potential bucket, I have a question about, which  
17 is, is there anything that was objected to and it's just  
18 simply non-discoverable (indiscernible) alltogether.

19 And in light of those buckets, addressing two and  
20 three, and having reviewed Judge Brown's opinion from  
21 11/9/2022 about discoverability of certain things relating to  
22 any application as to death penalty authorization, he seemed  
23 to recognize the big scope of what was discoverable.

24 So Mr. Scotti, are you going to be able to talk on  
25 this, or?

1 MR. SCOTTI: Your Honor, I think I would --

2 THE COURT: We can move down the line.

3 MR. SCOTTI: -- I think with specifics related to  
4 the motion, I would -- I'm going to defer to my colleague, Ms.  
5 Farrell.

6 But just with respect to what the court just said, I  
7 do think that the discovery motion itself -- this discovery  
8 motion itself, we don't view as being wrapped into the other  
9 proceedings that are going on.

10 THE COURT: No, I'm just trying to sort of read the  
11 tea leaves based on that opinion. But if I'm wrong, you  
12 should definitely tell me that. So with respect to the  
13 discovery motion, I'd like to hear from both sides, but what's  
14 really remaining, I guess, is what I'm saying, because the  
15 original motion is quite lengthy.

16 MR. SCOTTI: Your Honor, I would largely defer to  
17 defense counsel with respect to the specifics of what they --

18 THE COURT: Okay.

19 MR. SCOTTI: -- any issues they have or objections  
20 they have. Obviously, there is a certain subset of evidence  
21 that's indicated in their December 11th letter having to do  
22 with -- largely having to do with phones of co-conspirators,  
23 victims, although I don't know if the phones of victims are  
24 mentioned in here, but of co-conspirators in the case, the  
25 telephone extractions, the electronic extractions.

1                   THE COURT: Right.

2                   MR. SCOTTI: One of the things that we have been --  
3                   that we were discussing before Your Honor came out was that  
4                   issue to resolve that issue.

5                   THE COURT: Okay.

6                   MR. SCOTTI: I could tell you what we have proposed  
7                   and I think we're in agreement generally, is that we are  
8                   prepared to turn over to defense counsel the electronic  
9                   extractions of cell phones that were obtained from co-  
10                  defendants in the defendant's case that have pled guilty  
11                  publicly. And that we are in the process of identifying what  
12                  falls into that bucket.

13                  We don't believe it's a very -- it's going to be a  
14                  voluminous amount of phones, but we just want to be sure about  
15                  the number and for defendants that fall into that category, we  
16                  will be turning that over to them.

17                  They asked us about a time frame. You know, we  
18                  don't want to oversell and under-deliver, so we think 30 to 45  
19                  days given the holidays, is probably enough time.

20                  And that we also indicated we would turn them over  
21                  on a rolling basis so if we did get an extraction from a phone  
22                  and we were still looking for others, we would just turn that  
23                  phone over. We wouldn't do it all at once.

24                  THE COURT: Okay.

25                  MR. SCOTTI: Yeah. And again, these are co-

1 defendants that are related to the racketeering acts that  
2 these defendants are charged with.

3 THE COURT: Okay.

4 MR. SCOTTI: Because obviously this case had over 30  
5 defendants and it was divided into a number of different trial  
6 groups.

7 And you know, you have co-defendants who pled out  
8 who are not relevant to the racketeering acts and the other  
9 substantive counts that these defendants are charged with.

10 So what we're referring to are co-defendants who  
11 were charged with committing the same crimes as these  
12 defendants being in the same clique as these defendants, part  
13 of the same conspiracy.

14 THE COURT: Okay. Let's jump back on something you  
15 said sort of midway through, which is let me ask defense  
16 counsel, what remains -- whoever wants to address it is fine,  
17 of the motion to compel? What do you need a decision on the  
18 court on?

19 MS. TODD: So Your Honor, Natalie Todd, speaking on  
20 behalf of Alexi Saenz.

21 I think what would probably make sense, given that  
22 we filed to the court indicating that there were substantial  
23 amount of discovery that we believe was outstanding as it  
24 applies to the enterprise for one, in this case.

25 And also under Rule 16(a)(1)(E)(i), we have

1       conferred with counsel for the government and they have  
2       assured us that the -- in terms of the co-conspirators phones  
3       and he has just expressed that to the court, that they're more  
4       than happy to turn that over and that they will need time.

5               I think that covers a substantial part of that  
6       electronic portion of the discovery because within the  
7       contents of those phones or the different layers of  
8       information that are relevant to the enterprise and also might  
9       be relevant to one of the mitigating factors and aggravators  
10      that the government charge and indicated in their notice of  
11      intent which is leadership with respect to Justin Saenz's  
12      brothers.

13               THE COURT: Right.

14               MS. TODD: And so you'll have the chats, you'll have  
15      emails, you'll have all of that communication that we think is  
16      highly relevant to the enterprise and to relative culpability  
17      to some degree that would assist.

18               In terms of what else there might be, the government  
19      indicates that they do not have in their possession certain  
20      jail calls. They'll look to see what they have and they'll,  
21      as I indicate, turn over on a rolling basis.

22               I think it might make sense once we get that  
23      information to examine it, assess it and come back to the  
24      court at a later time, but I also think that counsel for Alexi  
25      -- Jairo Saenz might have some additional information --

1                   THE COURT: Okay. Let me just respond to that and  
2 then tell me whatever you want to tell me.

3                   One option would be, given that representation that  
4 must obtain to the co-defendant at least in part, would be to  
5 renew the motion after you have whatever's is going to be  
6 produced and hopefully that motion will be shorter than this  
7 motion --

8                   MS. TODD: Yes.

9                   THE COURT: -- and then we can just deal with that.  
10                  Okay, that being said, now please tell me whatever you want.

11                  MS. SHARKEY: Just one point, we're going to --

12                  THE COURT: It's better if you stand by the  
13 microphone, excuse me that's fine.

14                  MS. SHARKEY: Oh, it is? Okay, sorry.

15                  One point that we're still working on, Judge, we  
16 received the discovery on November 23rd. thank you to the  
17 government for providing that with us. but we will likely  
18 supplement the discovery for certain requests that we don't  
19 feel were fully answered.

20                  An example of that is the DNA testing we believe is  
21 incomplete and we would like to find out additional  
22 information so that we can use appropriate experts, if  
23 necessary.

24                  THE COURT: Okay. That I think my -- the logic of  
25 my statement was probably still obtained, meaning that you can

1 see what you're going to get and to the degree you think  
2 perhaps you got discovery but it's incomplete, or something's  
3 missing, you can certainly renew or add on to your request to  
4 the court and we'll get you a ruling one way or the other.

5 I still suspect that a subsequent motion will be  
6 shorter than what I got in the first instance, even with these  
7 caveats.

8 Does that make sense to everybody then, to operate  
9 that way. You can have the government's rolling discovery and  
10 then if another motion is necessary, make it.

11 Does anybody disagree with that half or object to  
12 that?

13 MR. SCOTTI: No, Your Honor, we don't object to that  
14 in terms of a -- and I think that makes sense, as they're  
15 going through it if they have supplemental requests and follow  
16 up and we will address those accordingly and we're just kind  
17 of it's like whittling this down as we go.

18 One thing just in connection with what Ms. Todd had  
19 said before about jail calls, you know, Your Honor to the  
20 extent that there -- we have jail calls of co-conspirators  
21 then, you know, we can discuss with them about turning those  
22 over and -- but it's, you know, we don't want to be put in a  
23 position here where we're conceding that all of the -- all  
24 jail calls are Rule 16 discovery that we're obligated to turn  
25 these things over, but we're going to look at them -- first of

1 all, we have to see what we have --

2 THE COURT: Yeah, I think --

3 MR. SCOTTI: -- there are a lot of defendants and  
4 it's just -- but we will notify them as to the results of our  
5 search and then things that we're going to turn over, we'll  
6 turn over and if they have follow up questions or issues,  
7 we'll try to resolve them.

8 THE COURT: Well I think that makes sense also  
9 because then any follow up will likely be narrower than giving  
10 the entire universe of every call.

11 MR. SCOTTI: Yes.

12 THE COURT: So I think that makes sense to proceed  
13 in that fashion.

14 Ms. Todd, you wanted to add something? No? You  
15 were kind of nodding so I thought maybe you had more.

16 MS. TODD: No, Your Honor, thank you.

17 THE COURT: Okay. Is there anything else that we  
18 need to address or should I just wait then to hear from you, I  
19 guess. I could maybe put together a status report for 60 day.  
20 That would cover your 45 day window, Mr. Scotti, does that  
21 make sense?

22 MS. SHARKEY: Judge, can we have one second?

23 THE COURT: Yeah, of course.

24 (Pause.)

25 THE COURT: Oh, and a reminder to go to Judge Brown

1 when we're done.

2 MR. SCOTTI: Yes, Your Honor. We heard --

3 THE COURT: I don't want to forget and I don't want  
4 to hear about me forgetting later, so --

5 MR. SCOTTI: It's like instead of a pop quiz, it's a  
6 pop status conference.

7 THE COURT: Correct. Good luck.

8 MS. SHARKEY: Your Honor, we request when the court  
9 is scheduling this matter that the court schedule 45 days from  
10 today, or close to that, to receive the government's response  
11 which we could review.

12 THE COURT: That fine to make a request. Is there  
13 something that you're concerned about when you're picking that  
14 date?

15 MS. SHARKEY: No, just that our client would like to  
16 have some dates on the table.

17 THE COURT: Okay. No, that's fine. 45 days?

18 MR. SCOTTI: That's fine, Your Honor. And with  
19 respect to response, we're just talking about that -- the  
20 phones that we were discussing before, is that correct?

21 THE COURT: That's my impression only because that's  
22 what we were talking about, but let's make sure we're on the  
23 same page.

24 MS. SHARKEY: I missed that, I'm sorry.

25 MR. SCOTTI: Can I have a moment, Your Honor,

1 please?

2 THE COURT: Yeah, sure. Just make sure you turn  
3 your mics off while you're talking.

4 (Pause.)

5 MS. SHARKEY: Judge we're requesting that we receive  
6 the information on the cell phones in 45 days. We're not  
7 suggesting that the status be in 45 days. And if the  
8 government --

9 THE COURT: Yes. I think Mr. Scotti was trying to  
10 figure out whether it was the cell phones or something broader  
11 than the cell phones in 45 days. But okay, I think we're on  
12 the same page then.

13 MR. SCOTTI: Yeah, Your Honor, we -- and I  
14 understand, I think we are on the same page, 45 days is fine.  
15 Like I said, I believe that we'll be able to get them -- those  
16 materials within 45 days. If there is an issue with that, we  
17 will contact counsel, we'll contact the court. But we can do  
18 a 45 day adjournment.

19 And I think I made this clear before Judge, but I  
20 just want to make sure it's clear for the record. This is  
21 just for co-conspirator, co-defendants who have pled guilty  
22 publicly. This does not include cooperator phones and it does  
23 not include victims phones and that is what we discussed with  
24 counsel beforehand. I just want to make sure that that's  
25 clear.

1                   THE COURT: Okay. Clear? I'm getting no  
2 objections, so we'll call it clear. I'm just going to refer  
3 to it as cell phone information addressed on the record  
4 without getting granular on this. And 45 days will put us at  
5 February 1.

6                   MS. SHARKEY: (Indiscernible).

7                   THE COURT: Correct. If you produce -- withdrawn,  
8 sorry.

9                   If you file a joint status report in approximately  
10 60 days, do you want it including any potential proposed  
11 briefing schedule for a subsequent motion to compel on it, or  
12 do you just want to have a conference and we'll work it out of  
13 the conference?

14                  MS. SHARKEY: Conference.

15                  MR. SCOTTI: That's fine, Your Honor.

16                  THE COURT: Okay. And we'll have that due on  
17 February 15th.

18                  MR. SCOTTI: Is that the date the court is setting  
19 for the status conference?

20                  THE COURT: No, that's the date for a status report  
21 to the court and then based on what you submit and whether you  
22 tell me, for example, it's an emergency, we got to get in,  
23 we'll schedule a conference and we'll work it out. Okay.

24                  Is there anything else before you go upstairs?

25                  MR. SCOTTI: Nothing further from the government.

1 Thank you, Your Honor.

2 THE COURT: For the defense anything else?

3 MS. SHARKEY: No, Your Honor, thank you.

4 THE COURT: Okay. So I'm going to mark the motion  
5 to compel withdrawn without prejudice to be resubmitted  
6 depending on how things unfold. Thank you everybody, we're  
7 concluded.

8 (Proceedings concluded at 2:53 p.m.)

9 I, CHRISTINE FIORE, Certified Electronic Court  
10 Reporter and Transcriber, certify that the foregoing is a  
11 correct transcript from the official electronic sound  
12 recording of the proceedings in the above-entitled matter.

13  
14 

15 \_\_\_\_\_ February 6, 2023

16 Christine Fiore, CERT

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